

SUBCHAPTER D : PERMIT RENEWALS

§116.310. Notification of Permit Holder.

The Texas Natural Resource Conservation Commission (TNRCC) shall provide written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided by certified or registered United States mail no less than 180 days prior to the expiration of the permit. The notice shall specify the procedure for filing an application for review and the information to be included in the application. The application shall be completed by the holder of the permit and returned to the TNRCC no later than 90 days before expiration of the permit. Pursuant to Texas Civil Statutes, Article 9027, the TNRCC shall exempt a holder of a permit from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of the TNRCC, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

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Effective December 11, 1995

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(1) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal, unless otherwise authorized for a qualified facility;

(2) the facility meets at least the requirements of any applicable New Source Performance Standards promulgated by the United States Environmental Protection Agency (EPA) under the authority of the Federal Clean Air Act (FCAA), §111, as amended; and

(3) the facility meets at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by EPA under the authority of the FCAA, §112, as amended.

(b) In addition to the requirements in subsection (a) of this section, if the TNRCC determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then:

(1) the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area; and

(2) the TNRCC shall impose as a condition for renewal only those requirements the executive director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area.

(c) The TNRCC shall review the compliance history of the facility in consideration of granting a permit renewal. The compliance history review shall be conducted in accordance with §§116.120-116.126 of this title (relating to Compliance History). In order for the permit to be renewed, the application shall include information demonstrating that the facility is or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. If the facility has a history which demonstrates failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit, the renewal shall not be granted. If it is found that violations in the compliance history constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct the violations, the renewal shall be denied. If a contested case hearing has not been called, then the staff must notify the applicant of the intent to recommend denial and state the basis of the findings. The applicant will be given an opportunity to respond to the notice. If the findings reflect a pattern of disregard for applicable regulations which do not warrant denial, additional conditions may be placed in the permit.

(d) A permit holder that fails to submit an application for review and renewal within 90 days prior to expiration of the permit, pursuant to §116.310 of this title (relating to Notification of Permit Holder), will cause the subject permit to expire, unless the time period for the submission of the application is extended by the executive director. Permits are subject to the following renewal schedule:

(1) any permit issued before December 1, 1991, is subject for review 15 years after the date of issuance; or

(2) any permit issued on or after December 1, 1991, is subject for review every ten years after the date of issuance;

(3) for cause, a permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a provision requiring the permit to be renewed at a period of between five and ten years.

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§116.312. Public Notification and Comment Procedures.

The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and renewal, as determined by the executive director. The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit renewal according to §116.132 of this title (relating to Public Notice Format) and §116.133 of this title (relating to Sign Posting Requirements). All requirements pertaining to signs and public notification in §116.132 and §116.133 of this title and §116.134 of this title (relating to Notification of Affected Agencies) and to public comments in §116.136 of this title (relating to Public Comment Procedures), which apply to proposed construction, proposed facilities, and permit applications shall apply likewise to proposed renewals, existing

facilities, and renewal applications. The sign heading required under §116.133(a)(2) of this title shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT." When newspaper notices are published in accordance with §116.132 of this title, the applicant for permit renewal shall furnish a copy of such notices and dates of publication to the TNRCC in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to the TNRCC, the applicant shall certify that the signs required by §116.133 of this title have been posted in accordance with the provisions of that paragraph.

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§116.313. Renewal Application Fees.

(a) The holder of a permit to be reviewed for renewal by the Texas Natural Resource Conservation Commission (TNRCC) shall remit a fee with each renewal application, pursuant to the Texas Clean Air Act, §382.062(a)(1)(B), based on the total annual allowable emissions from the permitted facility for which the renewal is being sought, as applied to the following table.

RENEWAL FEE TABLE*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
X ≤ 5	\$300	--
5 < X ≤ 24	\$300	\$35/ton
24 < X ≤ 99	\$965	\$25/ton
99 < X ≤ 994	\$2,840	\$8/ton
X > 994	\$10,000	--

Minimum fee: \$300

Maximum fee: \$10,000

* To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be \$1,615 (base fee of \$965, plus incremental fee of \$25 x 26 tons or \$650).

(b) This fee shall be due and payable at the time application for review and renewal is filed with the TNRCC in response to written notice from the TNRCC consistent with §116.310 of this title (relating to Notification of Permit Holder). No fee will be accepted before the permit holder has been notified by the TNRCC that the permit is scheduled for review. The basis for fees is the schedule in effect at the time the application is filed. All permit review fees shall be remitted by check or money

order payable to the TNRCC and mailed to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the agency will consider an application to be complete.

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§116.314. Review Schedule.

(a) Renewal of permit. Subsequent to review, the executive director shall renew a permit if it is determined the facility meets the requirements of §116.311 of this title (relating to Permit Renewal Applications) and §116.312 of this title (relating to Public Notification and Comment Procedures). The executive director shall notify the permit holder in writing of the decision regarding renewal. If the permit cannot be renewed, the executive director shall forward, with the notice, a report which describes the basis for the determination. If denial is based on failure to meet the requirements of §116.311(a) or (b) of this title, the executive director's report shall establish a schedule for compliance with the renewal requirements. The report shall be forwarded to the permit holder no later than 180 days after the Texas Natural Resource Conservation Commission (TNRCC) receives a completed application. The permit shall be renewed if the requirements are met according to the schedule specified in the report and the executive director shall notify the permit holder in writing of the permit renewal. However, if denial is based on failure to maintain substantial compliance with the provisions of the Texas Clean Air Act or the terms of the existing permit pursuant to §116.311(c) of this title, the renewal denial shall be final, and the executive director shall notify the permit holder in writing of the denial.

(b) Contested case hearing. In the event that the permit holder fails to satisfy the TNRCC requirements for corrective action by the deadline specified in the TNRCC report, the applicant shall be required to show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted pursuant to the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(c) Effective date of existing permit. An existing permit shall remain effective until it is renewed, or until the deadline specified in the executive director's report to the permit holder, or until a date specified in any commission order entered following a contested case hearing held pursuant to subsection (b) of this section. An existing permit shall remain in effect during the course of a contested case hearing if the hearing proceeds beyond the permit expiration as identified in §116.311(d) of this title.

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